IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

WP(C).No. 6552 of 2007(E)

OS.127/2006 of MUNSIFF COURT, PALA
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PETITIONER:

THOMAS, S/O THOMAS,
THULUVANICKAL HOUSE, PAYAPPAR KARA,
LALAM VILLAGE, MEENACHIL TALUK,
KOTTAYAM.

BY ADV. SRI.B.KRISHNA MANI
SRI.JOSEPH T.JOHN

RESPONDENTS:

V.D.JOSEPH,
VALIYAKUNNEL HOUSE,
VELLAPPADU KARA, PALA P.O.,
LALAM VILLAGE, MEENACHIL TALUK,
KOTTAYAM.

BY ADV. SRI.P.C.HARIDAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT. P1 **TRUE COPY OF THE PLAINT DTD. 7.4.06 IN OS 127/06 BEFORE MUNSIFF'S COURT, PALA.**

EXT.P2 **TRUE COPY OF WRITTEN STATEMENT DTD.19/7/06.**

EXT.P3 **TRUE COPY OF PROOF AFFIDAVIT DTD.8.2.06.**

EXT.P4 **TRUE COPY OF PROOF AFFIDAVIT DTD. NIL.**

EXT.P5 **TRUE COPY PROMISSORY NOTE DTD.15.6.04.**

EXT.P6 **TRUE COPY OF PETITION DTD.13.2.07.**

EXT.P7 **TRUE COPY OF ORDER DTD. 15.2.07 IN I.A.NAO 341/07 IN OS 127/06 BEFORE MUNSIFF'S COURT PALA.**

[True copy]

P.A. to Judge.

M.N. KRISHNAN, J.

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W.P.C. NO. 6552 OF 2007

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Dated this the 18th day of June, 2007.

J U D G M E N T

This writ petition is filed seeking to quash the order in I.A.341/07 in O.S.127/06. The suit is one for realization of an amount due under a promissory note dated 15.6.04. It is submitted by the learned counsel for the writ petitioner that particulars and details regarding the effect of date of payments before the execution of the promissory note are mistakenly noted and therefore seeks permission to withdraw the suit with liberty to file a fresh suit.

2. It is strongly opposed by the other side. If permission is granted to withdraw the suit today with liberty to file fresh suit it will be barred by limitation. I am informed by the learned counsel that an application for amendment has been filed and it is pending consideration before the trial court. It is only just to direct the trial court to dispose of the amendment application in accordance with law as per the

principles enunciated by the various decisions of this court which the counsel may place before the trial court. The decisions referred to are **Prabhavathi v. Kunhathambi Umma (1981 KLT 438) and Amina v. Kunjubawa (2005 (4) KLT 609)**. The other side may also be permitted to file their counter statement and argue on the position of law in support of that and the trial court is directed to dispose of the amendment application in accordance with law.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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